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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/862,502
Filing Date: May 23, 2001
Appellant(s): DITTRICH, GERHARD

Felix D'Ambrosio, Reg.No. 25,721
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 26, 2007 appealing from the Office action mailed May 23, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,661,914	Mulokey et al	04-1987
6,904,385	Budike, Jr.	06-2005
6,176,826	Shimura et al	01-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 8-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimura (US 6,176,826) in view of Budike, Jr. (US 6,904,385), further in view of Mulokey et al (US 4,661,914).

Regarding claim 8 –

Shimura discloses a method for providing measured values for end customers, comprising the steps of recording a measured value for a process variable using a sensor S1, S2, S3 (e.g. col 4 ln 20-35)

Shimura does not disclose, but Budike does, calculating the costs for the end customer on the basis of the number of the transmission operations (e.g. col 7 ln 25 – col 8 ln 55).

Further, neither Shimura nor Budike specifically disclose counting the number of transmission operations. However, official notice is taken that counting the number of operations is old, well known and necessary in anything having to do with monitoring and accounting as occurs in both Budike and Shimura. Specifically, you can't know what is going on, what is and how much of everything is being used, how much everyone has to be paid, etc unless you count. One example of such is in Mulokey (e.g. abs) where each address count is incremented by one after each group of bits is received.

It would be obvious for one of ordinary skill in the art to combine the teachings of Budike, Mulokey, and Shimura in order to more easily calculate costs to the consumer. Further, it would be obvious in any event, to utilize the readings obtained by the apparatus in Shimura in order to calculate costs, payment, amounts, etc.

Regarding claim 9 –

Shimura discloses the method as defined in claim 8, wherein the data transmission between sensor S 1, S2, S3 and the process control system PLS takes place in line-conducted fashion, using, for example, a data bus system DBS (e.g. col 4 ln 20-35).

Regarding claim 10 –

Shimura discloses the method as defined in claim 8, wherein the data transmission between sensors S1, S2, S3 and the process control system PLS takes place by radio (e.g. abstract).

Regarding claims 11, 27, 28 and 29 –

Shimura discloses the method as defined in claim 8, wherein the number A is stored in the sensor S1, S2, S3 (e.g. col 4 ln 20-35). As above, however, official notice is taken that counting the number of operations is old, well known and necessary in anything having to do with monitoring and accounting as occurs in both Budike and Shimura. Specifically, you can't know what is going on, what is and how much of everything is being used, how much everyone has to be paid, etc unless you count. One example of such is in Mulokey (e.g. abs) where each address count is incremented by one after each group of bits is received.

Regarding claim 12 –

Shimura discloses the method as defined in claim 9, wherein the number A is stored in the sensor S1, S2, S3 (e.g. col 4 ln 20-35)

Regarding claim 13 –

Shimura discloses the method as defined in claim 10, wherein the number A is stored in the sensor S1l, S2, S3 (e.g. col 4 ln 20-35).

Regarding claim 14 –

Shimura discloses the method as defined in claim 8, wherein the number A is stored in the process control system PLS (e.g. fig. 1).

Regarding claim 15 –

Shimura discloses the method as defined in claim 9, wherein the number A is stored in the process control system PLS (e.g. fig 1).

Regarding claim 16 –

Shimura discloses the method as defined in claim 8, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 1).

Regarding claim 17 –

Carrier discloses the method as defined in claim 9, wherein the measured values are transmitted over the internet from the sensor S 1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over

the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

Regarding claim 18 –

Shimura discloses the method as defined in claim 10, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

Regarding claim 19 –

Shimura discloses the method as defined in claim 11, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

Regarding claim 20 –

Shimura discloses the method as defined in claim 12, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

Regarding claim 21 –

Shimura discloses the method as described in claim 8, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. col 4 ln 20-35).

Regarding claim 22 –

Shimura discloses the method as defined in claim 9, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. abstract).

Regarding claim 23 –

Shimura discloses the method as defined in claim 10, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted ((e.g. col 4 ln 20-35)

Regarding claim 24 –

Shimura discloses the method as defined in claim 11, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the

internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

Regarding claim 25 –

Shimura discloses the method as defined in claim 12, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which database the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted (e.g. fig 4).

Regarding claim 26 –

Shimura discloses a method for selling measured values to end customers, comprising the steps of: recording a measured value for a process variable using a sensor S1, S2, S3; transmitting the measured value to a process control system PLS (e.g. col 4 ln 20-35).

Shimura does not disclose, but Budike does, calculating the costs for the end customer on the basis of the number of the transmission operations (e.g. col 7 ln 25 – col 8 ln 55).

Further, neither Shimura nor Budike specifically disclose counting the number of transmission operations. However, official notice is taken that counting the number of operations is old, well known and necessary in anything having to do with monitoring and accounting as occurs in both Budike and Shimura. Specifically, you can't know

what is going on, what is and how much of everything is being used, how much everyone has to be paid, etc unless you count. One example of such is in Mulokey (e.g. abs) where each address count is incremented by one after each group of bits is received.

It would be obvious for one of ordinary skill in the art to combine the teachings of Budike, Mulokey, and Shimura in order to more easily calculate costs to the consumer. Further, it would be obvious in any event, to utilize the readings obtained by the apparatus in Shimura in order to calculate costs, payment, amounts, etc.

(10) Response to Argument

Appellant argues that nothing in the cited prior art teaches, discloses or suggests counting the number of transmission operations.

Examiner respectfully disagrees and directs attention to Budike wherein:

"in the present invention system with the internet energy platform, the plurality of energy and utility-related search engines locate pertinent information for the consumer and offer opportunities to the consumer to achieve energy savings, energy efficiencies and other useful information. These engines may include:

real time pricing,

energy transactions,

energy dispatch,

energy production,

real time energy usage,

energy usage charts,

rate analysis, and

savings strategies." (col 9 ln 39-54).

Further, Budike discloses wherein "the user confirms or selects each utility rate base for each meter--e.g. gallons per hour." (col 13 ln 38-40).

It would be obvious to one of ordinary skill in the art at the time the invention was made to adapt Budike to different measurements for utilities given that gallons per hour might not be the best way to measure electricity usage, or indoor temperature. Further, in Mulokey (e.g. abs) each address count is incremented by one after each group of bits is received, thus, in effect counting the number of transmission operations. Thus, the claims recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter is obvious un KSR.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Cristina Owen Sherr /COS/

Conferees:

Kambiz Abdi For Andrew Fischer /K.A/

Vincent A. Millin

/VM/

Appeals Conference Specialist

09/862,502 APPEAL TABLE – Claim 8 and Shimura (US 6,176,826), Budike, Jr. (US 6,904,385), and Mulokey et al (US 4,661,914).

Clause No.	Claim 8	
1	A method for providing measured values for end customers, comprising the steps of: recording a measured value for a process variable using a sensor $1, $2, $3;	Shimura "a vital sign sensor for measuring a vital sign, and a vital sign memory for storing the vital sign measured by said vital sign sensor, and the center terminal has a vital sign collection unit uploading the vital sign stored in said vital sign memory provided in the patient terminal which has been connected with the center terminal by the line automatic connecting unit. The vital sign sensor may be ones which serve to grasp a physical condition of the patient, and is not restricted to the specified sensors. Typically, the vital sign sensor implies a tonometer, an electrocardiograph, a pulse measurement

Clause No.	Claim 8	
		instrument, a clinical thermometer and the like. " (col 4 ln 23-35). Such sensors measure electrical output and electrical transmission (electrocardiography) and usage by various parts of the body, as well as count frequency of certain events (pulse measurement), measure temperature (clinical thermometer), etc. In essence the sensors in Shimura perform functions equivalent to those of the instant application.
2	transmitting the measured value to a process control system PLS;	Communication line through which communications of data are . . .performed Col 2 ln 12-25
3	counting the number A of transmission operations; and	Budike Col 8 ln 45-55 "pricing" "energy transactions"

Clause No.	Claim 8	
		(col 9 ln 39-54).
4	calculating the costs for the end customer on the basis of the number A of the transmission operations.	Budike "the user confirms or selects each utility rate base for each meter--e.g. gallons per hour." (col 13 ln 38-40).

Further, neither Shimura nor Budike specifically disclose counting the number of transmission operations. However, official notice is taken that counting the number of operations is old, well known and necessary in anything having to do with monitoring and accounting as occurs in both Budike and Shimura. Specifically, you can't know what is going on, what is and how much of everything is being used, how much everyone has to be paid, etc unless you count. One example of such is in Mulokey (e.g. abs) where each address count is incremented by one after each group of bits is received.